

**IN THE UNITED STATES BANKRUPTCY COURT
FOR MIDDLE DISTRICT OF PENNSYLVANIA**

In re:	*
CCI CONSTRUCTION CO., INC., A	* Case No: 00-02239RJW
CORPORATION AKA CCI/ORTENZIO	Chapter 11
COMPANY, INC.,	*
Debtor.	*
* * * * *	* * * * *
CCI CONSTRUCTION CO., INC., A	* Adversary No. 1-01-00011A
CORPORATION AKA CCI/ORTENZIO	*
COMPANY, INC., ET AL.,	*
Plaintiffs,	*
v.	*
ALLFIRST BANK,	*
Defendant.	*
* * * * *	* * * * *

**THE ST. PAUL COMPANIES'
STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL**

The St. Paul Companies,¹ Plaintiff-Intervenors, by their undersigned counsel, pursuant to Bankruptcy Rule 8006, submit this Statement of Issues and Designation of Record on Appeal, with respect to its appeal from the Opinion and Order entered on April 18, 2007.

¹ The St. Paul Companies includes the following: The St. Paul Companies, Inc. and/or Seaboard Surety Company and/or St. Paul Fire and Marine Insurance Company and/or St. Paul Guardian Insurance Company and/or St. Paul Mercury Insurance Company and/or Economy Fire & Casualty Company and/or United States Fidelity and Guaranty Company and/or Fidelity and Guaranty Insurance Underwriters, Inc. and/or Fidelity and Guaranty Insurance Company.

Statement of Issues:

1. Having concluded upon its findings of fact and conclusions of law that Allfirst Bank has not met its burden of proving the nonavoidability of the transfers made on February 24 and 25, 2000, in the total amount of \$1,806,450.65, did the Bankruptcy Court err in awarding Plaintiffs a recovery of only \$435,591.62 plus interest and not a judgment in the amount of \$1,806,450.65?

2. To the extent the Bankruptcy Court concluded that the money seized by Allfirst Bank on February 24 and 25, 2000 did not give rise to a right of Plaintiffs to recover \$1,806,450.65, did the Bankruptcy Court err in failing to classify those seizures of funds as set offs improving Allfirst Bank's unsecured position in the amount of \$1,806,450.65?

3. Did the Bankruptcy Court err in concluding that Plaintiffs were not entitled to void and recover as either a set off or preference funds seized by Allfirst Bank on February 22, 2000 in the amount of \$510,840.84?

4. Assuming *arguendo* that the Bankruptcy Court properly concluded the measure of damages recoverable by the Plaintiffs was the value of the dishonored checks, did the Bankruptcy Court err in concluding that Allfirst Bank improved its unsecured position by only \$435,591.63--the value of the dishonored checks presented on February 24 and 25, 2000--as opposed to \$649,611.18, which is the dollar value of all checks Allfirst dishonored on or after February 24, 2000?

5. Did the Bankruptcy Court err in accepting Allfirst Bank's proffered expert Paul Dorsch as an expert at trial?

6. Did the Bankruptcy Court err in accepting Allfirst Bank's proffered expert Craig Schwartz as an expert at trial?

Designation of Record:

The St. Paul Companies designate the following items from the Court's docket, identifying the filing date, docket number and description of each item as set forth in the official court docket.

Filing Date	#	Docket Text
01/10/2001	<u>1</u>	COMPLAINT Filed , [DR], ORIGINAL NIBS DOCKET ENTRY #1 (Entered: 01/11/2001)
12/28/2001	<u>17</u>	ANSWER by DEFENDANT Re: Item # 1, [DR], ORIGINAL NIBS DOCKET ENTRY #17 (Entered: 01/02/2002)
04/16/2002	<u>23</u>	MOTION TO INTERVENE AS OF RIGHT OR, IN THE ALTERNATIVE, PERMISSIVELY by THE ST. PAUL COMPANIES Re: Item # 1 [Disposed] [Entered: 04/17/02], [DR] MEMORANDUM in support by THE ST. PAUL COMPANIES Re: Item # 23, [DR], ORIGINAL NIBS DOCKET ENTRY #23 (Entered: 04/17/2002)
04/17/2002	<u>24</u>	ORDER granting Re: Item # 23, [DR], ORIGINAL NIBS DOCKET ENTRY #24 (Entered: 04/17/2002)
05/01/2003	<u>31</u>	MOTION for summary judgment [Partial] filed by Plaintiff/Debtor , [NP], ORIGINAL NIBS DOCKET ENTRY #31 (Entered: 05/02/2003)
05/01/2003	<u>32</u>	MEMORANDUM in support by Debtor/Plaintiff Re: Item # 31, [NP], ORIGINAL NIBS DOCKET ENTRY #32 (Entered: 05/02/2003)
05/01/2003	<u>33</u>	STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT filed by Debtor/Plaintiff and Plaintiff-

		Intervenors, The St. Paul Companies Re: Item # 31, [NP], ORIGINAL NIBS DOCKET ENTRY #33 (Entered: 05/02/2003)
05/16/2003	<u>35</u>	Objection to Motion for Partial Summary Judgment and Cross-Motion for Summary Judgment Filed by Michael D Nord of Gebhardt & Smith on behalf of Allfirst Bank (RE: related document(s) <u>31</u>). (Ripple, Dawn) (Entered: 05/19/2003)
05/16/2003	<u>36</u>	Memorandum in Support Filed by Michael D Nord of Gebhardt & Smith on behalf of Allfirst Bank (RE: related document(s) <u>35</u>). (Ripple, Dawn) (Entered: 05/19/2003)
05/16/2003	<u>37</u>	Answer Filed by Michael D Nord of Gebhardt & Smith on behalf of Allfirst Bank (RE: related document(s) <u>33</u>). (Ripple, Dawn) (Entered: 05/19/2003)
06/05/2003	<u>38</u>	Stipulation by Parties Extending time for filing a response to Defendant Allfirst Banks's Opposition to Motion for Partial Summary Judgment and Cross-Motion for Summary Judgment and Memorandum In Support through and including June 11, 2003 Filed by Douglas J. Smillie on behalf of The St. Paul Companies (RE: related document(s) <u>35</u>). (Petrina, Nadine) (Entered: 06/06/2003)
06/09/2003	<u>39</u>	Order approving Stipulation (RE: related document(s) <u>38</u>). (Ripple, Dawn) (Entered: 06/09/2003)
06/11/2003	<u>40</u>	Consolidated Memorandum in Reply. Filed by Cynthia E Rodgers-Waire of Whiteford Taylor & Preston, Robert E. Chernicoff of Cunningham & Chernicoff, Douglas J. Smillie on behalf of Allfirst Bank , CCI Construction Co., Inc. , The St. Paul Companies (RE: related document(s) <u>35</u>). (Ripple, Dawn) (Entered: 06/12/2003)
06/11/2003	<u>41</u>	Statement of Undisputed Facts in Support of Plaintiffs' Opposition to Allfirst Bank's Cross Motion for Summary Judgment. Filed by Robert E. Chernicoff of Cunningham & Chernicoff, Cynthia E Rodgers-Waire of Whiteford Taylor & Preston, Douglas J. Smillie on

		behalf of Allfirst Bank , Cci Construction Co., Inc. , The St. Paul Companies (RE: related document(s) 35). (Ripple, Dawn) (Entered: 06/12/2003)
06/13/2003	42	Request for Oral Argument Filed by Robert E. Chernicoff of Cunningham & Chernicoff, Cynthia E Rodgers-Waire of Whiteford Taylor & Preston, Douglas J. Smillie on behalf of Cci Construction Co., Inc. , The St. Paul Companies (RE: related document(s) 31 , 35). (Ripple, Dawn) (Entered: 06/18/2003)
06/20/2003	43	Stipulation Extending Time for Responding between parties. Filed by Robert E. Chernicoff of Cunningham & Chernicoff, Lawrence J Gebhardt of Gebhardt & Smith, Michael D Nord of Gebhardt & Smith, Cynthia E Rodgers-Waire of Whiteford Taylor & Preston, Douglas J. Smillie on behalf of Allfirst Bank , Cci Construction Co., Inc. , The St. Paul Companies (RE: related document(s) 40). (Ripple, Dawn) (Entered: 06/20/2003)
06/23/2003	45	Order approving Stipulation (RE: related document(s) 43). (Ripple, Dawn) (Entered: 06/23/2003)
06/26/2003	46	Answer to the Opposition of Plaintiffs and Intervenor to Allfirst's Motion for Summary Judgment. Filed by Lawrence J Gebhardt of Gebhardt & Smith, Michael D Nord of Gebhardt & Smith on behalf of Allfirst Bank (RE: related document(s) 40 , 41). (Ripple, Dawn) (Entered: 06/27/2003)
06/26/2003	47	Request for Hearing. Filed by Lawrence J Gebhardt of Gebhardt & Smith, Michael D Nord of Gebhardt & Smith on behalf of Allfirst Bank (RE: related document(s) 46). (Ripple, Dawn) (Entered: 06/27/2003)
08/08/2003	48	Order (RE: related document(s) 5 , 47 , 31). Oral Argument is scheduled for 8/25/2003 at 10:00 AM at 3rd & Walnut Streets, Bankruptcy Courtroom (3rd Floor), Federal Building, Harrisburg, PA. (DR) (Entered: 08/11/2003)
08/08/2003	49	Original Document (RE: related document(s) 48). (DR) (Entered: 08/13/2003)

08/25/2003	50	Proceeding Memo: Oral argument taken. Transcript ordered by the Court. Matter taken under advisement. September 3, 2003 trial on adversary postponed pending disposition of cross motions.(RE: related document(s) 48 , 44). (JG) (Entered: 08/25/2003)
09/18/2003	51	Transcript of testimony of hearing held August 25, 2003 by Judge John J. Thomas. (RE: related document(s) 50). (JG) (Entered: 09/26/2003)
11/18/2003	54	Stipulation between plaintiff and defendant that all parties simultaneously shall file their respective post-summary judgment hearing memoranda on November 21, 2003. Filed by Robert E Chernicoff of Cunningham & Chernicoff PC on behalf of CCI Construction Co., Inc. (RE: related document(s) 48). (DR) (Entered: 11/19/2003)
11/20/2003	55	Order approving Stipulation (RE: related document(s) 54). (DR) (Entered: 11/20/2003)
11/21/2003	56	Post Hearing Memorandum in Support. Filed by Lawrence J Gebhardt of Gebhardt & Smith, Michael D Nord of Gebhardt & Smith on behalf of Allfirst Bank (RE: related document(s) 35). (DR) (Entered: 11/24/2003)
11/21/2003	57	Post Hearing Memorandum in Support and in Opposition. Filed by Robert E Chernicoff of Cunningham & Chernicoff PC, Cynthia E Rodgers-Waire of Whiteford Taylor & Preston, Douglas J. Smillie on behalf of CCI Construction Co., Inc. , The St. Paul Companies (RE: related document(s) 31 , 35). (DR) (Entered: 11/24/2003)
05/20/2004	58	(Opinion/Memorandum) of Judge and Order Denying Plaintiff's Motion for Partial Summary Judgment and Defendant's Opposition to Motion for Partial Summary Judgment and Cross-Motion for Summary Judgment. TRIAL on the Complaint is scheduled for June 10, 2004 at 10:30 a.m. in Courtroom #2 in the Max Rosenn United States Courthouse at 197 South Main Street, Wilkes-Barre, PA. (RE: related document(s) 31 , 35). (Attachments: # 1 Certificate of Service) (DR) (Entered: 05/20/2004)

		05/25/2004)
08/12/2004	65	Order rescheduling trial date (RE: related document(s) 58 , 1 , 63). Trial date set for 2/3/2005 at 09:30 AM and 2/4/05 at 09:30 AM at 197 South Main Street, Courtroom 2, Max Rosenn US Courthouse, Wilkes-Barre, PA. (Attachments: # 1 Certificate of Service) (DR) (Entered: 08/13/2004)
02/03/2005	71	Motion to Strike Brief for Failure to Conform to Rule of Court. Filed by Robert E Chernicoff of Cunningham & Chernicoff PC on behalf of CCI Construction Co Inc (RE: related document(s) 70) . (DR) (Entered: 02/07/2005)
02/03/2005	72	Proceeding Memo re hearing held, testimony taken. (RE: related document(s) 58 , 1). (DR) (Entered: 02/07/2005)
02/04/2005	73	Proceeding Memo(RE: related document(s) 58 , 1). Briefs due from both parties within (45) forty five days, Reply Briefs due from both parties within (30) thirty days. (DR) (Entered: 02/07/2005)
03/16/2005	74	Transcript of testimony of trial held 2/3/05 (RE: related document(s) 72). (PJR) (Entered: 03/16/2005)
03/16/2005	75	Transcript of testimony of trial held 2/4/05 (RE: related document(s) 73). (PJR) (Entered: 03/16/2005)
04/08/2005	76	Corrective Entry - Corrected title page for transcript of trial held 2/4/05 (RE: related document(s) 74). (PJR) (Entered: 04/08/2005)
04/08/2005	77	Corrective Entry: Correct title page for trial transcript of 2/3/05 (RE: related document(s) 74 , [76]). (PJR) (Entered: 04/08/2005)
04/08/2005	78	Corrective Entry: Correct title page for trial transcript of 2/4/05 (RE: related document(s) 75). (PJR) (Entered: 04/08/2005)
05/02/2005	79	Post Trial Memorandum Filed by Robert E Chernicoff

		of Cunningham & Chernicoff PC on behalf of CCI Construction Co Inc (RE: related document(s) 73). (DR) (Entered: 05/03/2005)
05/03/2005	80	Post-Trial Brief Filed by Lawrence J Gebhardt of Gebhardt & Smith, Michael D Nord of Gebhardt & Smith on behalf of Allfirst Bank (RE: related document(s) 73). (DR) (Entered: 05/05/2005)
06/01/2005	81	Reply to Allfirst's Post Trial Brief, Filed by Robert E Chernicoff of Cunningham & Chernicoff PC on behalf of CCI Construction Co Inc , and Gary S Posner Esq. on behalf of The St. Paul Companies (RE: related document(s) 80). (NP) (Entered: 06/02/2005)
06/02/2005	82	Defendant's Reply to Plaintiffs' Post Trial Memorandum. Filed by Lawrence J Gebhardt of Gebhardt & Smith, Michael D Nord of Gebhardt & Smith on behalf of Allfirst Bank (RE: related document(s) 79). (BW) (Entered: 06/03/2005)
04/18/2007	83	Opinion of the Court (RE: related document(s) 1). (CMS) (Entered: 04/18/2007)
04/18/2007	84	Order of the Court entering judgment in favor of the Plaintiff, CCI Construction Co., Inc., a corporation, a/k/a CCI/Ortenzio Co., Inc., and against the Defendant in the amount of \$435,591.63, together with prejudgment interest from the date of the filing of the adversary proceeding. (RE: related document(s) 1 , 83). (CMS) (Entered: 04/18/2007)
04/27/2007	85	Notice of Appeal of Order dated <i>April 18, 2007</i> . Filing fee due in the amount of \$ 255.00 Filed by Robert E Chernicoff of Cunningham and Chernicoff PC on behalf of The St. Paul Companies (RE: related document(s) 83 , 84). Transmission to District Court of Designation(s) due by 5/27/2007. Appellant Designation due by 5/7/2007. (Attachments: # 1 Certificate of Service)(Chernicoff, Robert) (Entered: 04/27/2007)

The St. Paul Companies further designates the following exhibits marked at trial of the above-captioned adversary proceeding as part of the record for this appeal.

<u>Exhibit No.</u>	<u>Description</u>	<u>Bates Stamp No.</u> (to the extent available)
P-1	Film Cash Solutions Promissory Note	C1102-C1107
P-2	Allfirst Bank Statement for CCI Construction Co., Inc., Account No. 0288-6451-4	C7401-C7415
P-3	Termination Letter from Lawrence J. Gebhardt, Esquire to CCI Construction Co., Inc. dated February 24, 2000	
P-4	Proof of Claim of the St. Paul Companies	
P-5	List of CCI Checks Dishonored by Allfirst	
P-6	Redacted Version of Defendant, Allfirst Bank's answers to Amended and Restated First Set of Interrogatories of Plaintiff, CCI Construction Co., Inc.	
P-7	Report of J.F. "Chip" Morrow	
P-8	Loan Bill from Allfirst Bank to CCI Construction	
P-9	Craig Schwartz Memorandum to Jerry Elias (re: payroll checks returned to parent account)	

/s/ Gary S. Posner
 Gary S. Posner
 (admitted *pro hac vice*)
 Cynthia E. Rodgers-Waire
 (admitted *pro hac vice*)
 Whiteford, Taylor & Preston L.L.P.
 7 St. Paul Street
 Baltimore, Maryland 21202-1626
 (410) 347-8700

Attorneys for Plaintiff/Intervenors
 The St. Paul Companies, Inc

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of May, 2007, a copy of the foregoing Statement of Issues and Designation of Record of Appeal was sent via first class, United States mail, postage prepaid, to

Lawrence Gebhardt, Esquire
Michael D. Nord, Esquire
Gebhardt & Smith, LLP
One South Street, Suite 2200
Baltimore, Maryland 21202-328

Robert E. Chernicoff, Esquire
Cunningham & Chernicoff, P.C.
2320 North Second Street
P.O. Box 60457
Harrisburg, PA 17106-0457

/s/ Gary S. Posner
Gary S. Posner

1734912